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December 15, 1999

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Clifford Hawkes  
 National Park Service  
 12795 West Alameda Parkway  
 Lakewood, Colorado 80228

**RE: Comments to Winter Use Plan Draft Environmental Impact  
 Statement for the Yellowstone and Grand Teton National Parks and  
 John D. Rockefeller Memorial Parkway**

Dear Mr. Hawkes and Deciding Official:

We are submitting these comments to the Winter Use Plan Draft Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and John D. Rockefeller Memorial Parkway (hereinafter referred to as "DEIS") on behalf of our clients Edward P. Dougherty; West Yellowstone Tour and Travel; Town of West Yellowstone, Montana; West Yellowstone Chamber of Commerce; Roy N. Brown; Montana Snowmobile Association; American Council of Snowmobile Associations; and the Blue Ribbon Coalition, Inc. Please note that any or all of these individuals, organizations or their members may submit additional comments, and any such comments shall supplement these comments and are hereby incorporated by reference herein.

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The above-named individuals and organizations were granted defendant-intervenor status in the litigation which caused the creation of the DEIS, namely Fund for Animals v. Babbitt (D.D.C., Civ. No. 97-116) ("Babbitt"). The Court has retained jurisdiction over that case and we submitted numerous pleadings to the National Park Service (NPS) with our comments to the Temporary Closure of a Winter Road EA dated December 15, 1997. Those comments and materials submitted with it are also incorporated by reference in these comments as are any and all pleadings filed since that date in Babbitt.

These comments incorporate by reference the comments submitted by the cooperating agencies who participated in the DEIS including the states of Montana, Wyoming and Idaho; Gallatin and Park Counties, Montana; Park and Teton Counties, Wyoming; and Fremont County, Idaho. We will occasionally refer to the State of Wyoming's comments as "Wyoming Comments" and the State of Montana's comments as "Montana Comments" herein. Additionally, these comments incorporate by reference the comments submitted by John D. Munding of Consulting for Creative Solutions, LLC. Mr. Munding's comments are attached hereto as Exhibit "A" and will be hereinafter referred to as "Munding Comments."

We adopt the Revised Alternative E proposal crafted by the state of Wyoming and support the State of Montana's Proposed Preferred Alternative, and the Revised Alternative E proposed by the cooperating counties. Revised Alternative E better addresses the concerns raised by the Preferred Alternative B in the DEIS. The Preferred Alternative B is fatally flawed and is not backed by the cooperating agencies, interest groups nor the general public as was evident in the public hearings held by the NPS this fall.

**A. PRELIMINARY STATEMENT**

The release of the DEIS has resulted in significant efforts by many individuals, groups, local governmental agencies, three states and federal agencies. What is clear is that managing the Yellowstone and Grand Teton National Parks ("the Parks") is of great importance to the public - all of whom attach different yet strong beliefs on how their management is to be achieved.

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The NPS has utilized the release of the DEIS to wage its own media blitz. Of particular concern are the numerous press releases, articles, television, radio and Internet accounts of NPS personnel misrepresenting the results of scientific studies as relates to emissions, bison impacts, air and water quality, noise and the type of experience a visitor is expected to desire in the Parks. NEPA and the APA requires the agency to take a "hard look" at the impacts of their proposed action. The NPS has so blatantly misrepresented facts to the public<sup>1</sup> that it is questionable whether the agency is capable of taking that "hard look" in the objective manner required. Even after the NPS admitted their gross exaggeration of the emissions impacts in the Parks, the NPS continued to advocate their indefensible position that snowmobiles degrade Park resources.

It is of notable importance that contrary to the NPS representations, the study relied on to monitor exposure for particulate matter has an incorrect conclusions. The results showed concentrations measured over four (4) hours not twenty-four (24) hours as required by the particulate matter (PM) equation. The correct concentration was nineteen (19), not one hundred twelve (112). The EPA standard is sixty-five (65). Accordingly, the NPS portrayal of the snowmobile emissions was inflammatory and not based on proper scientific evaluations. Further, gas does not go straight out of the tail pipe, vapor and molecularized carbon leaves all tailpipes. The NPS press release grossly over estimates the PAH at 453 grams when it is actually .000543 pounds. The NPS exaggerated the effects of ethanol use they stated it is known to cause developmental and neurotoxic problems in humans. Ethanol only has these effects when ingested! The report relied upon by the NPS stated in part that "[o]n a peak day, when 2000 snowmobiles enter the Park, 32 tons of hydrocarbons and 88 tons of carbon monoxide can be emitted." This oft quoted statement is impossible as described as follows:

32 tons + 88 tons = 120 tons  
 120 tons = 240,000 lbs.  
 1 gallon of gasoline = 6.2 lbs.  
 240,000 lbs. = 38,710 gallons of gasoline  
 Average snowmobile gas consumption/day = 7 gallons

<sup>1</sup> See, for instance Yellowstone National Park press release dated October 9, 1999.

2000 snowmobiles x 7 gallons = 14,000 gallons of gas  
 14,000 gallons x 6.2 lbs. = 86,800 lbs. or 43.4 tons

Obviously, it is mathematically impossible to generate 120 tons of emissions on a peak day when only 43.4 tons of gasoline is consumed. Such blatant mistakes in calculations on part of a governmental entity is inexcusable and should not be used to base a discussion to plow the road to curtail snowmobile access.

Our clients do not seek to degrade the Parks as is evident in their support of Revised Alternative E. They wish, however, to receive reasonable decision making by the NPS based on facts, not rhetoric nor because a special interest group threatens to sue. The people that use the Parks, their local and state governments that are familiar with the natural resources, culture, recreation and economy have significant expertise in evaluating the Winter Use of the Parks have gone to great lengths to provide the NPS with meaningful comments and reasonable suggestions. Alternative B must be rejected and revised Alternative E selected as Revised Alternative E protects and enhances the states in which the Park lies, their local governments, their citizens and the visiting public.

The NPS media blitz aimed to turn public opinion against snowmobiling using blatantly flawed information violates the APA, NEPA as well as other federal statutes and regulations. The DEIS is subject to public comments and the NPS's attempt to misuse media coverage to meet its own end seriously compromises the whole process.

## **B. PROCEDURAL HISTORY AND CONCERNS WITH THE DEIS PROCESS**

### **1. Fund for Animals v. Babbitt.**

As described earlier, our clients were granted full defendant-intervenor status in the Babbitt case whose Settlement Agreement between the Fund for Animals ("Fund") and the National Park Service ("NPS") created the need and time frames for the DEIS. The Fund and the Greater Yellowstone Coalition requested the NPS to extend the comment period on the DEIS "to allow more time for people to comment" according to a November 20, 1999 article in the Casper

newspaper. It is ironic that now the Fund believes the time frame for public comment is unreasonable since in its October 10, 1997 Plaintiffs' Response to Comments of Proposed Intervenor Yellowstone Outdoor Recreation Solutions, et al., and To The Comments, Objections and Legal Memorandum of Proposed Intervenor Edward Dougherty, they, informed the Court that "[t]he [settlement] Agreement sets forth a realistic timetable for preparation of this EIS, and provides for 'at least' 60 days of public comment. Thus, the Agreement does not unduly restrict public comment."

The defendants-intervenor in Babbitt strenuously argued the time frames for the preparation and public comment on the EIS were unreasonably short and would negatively affect the quality of the EIS for that reason. As stated in the Comments and Objections of Intervenor-Applicants Edward P. Dougherty, et al. Regarding Proposed Settlement Agreement and Motion To Approve Settlement and to Dismiss Action, "[t]he restricted proposed time frames for decision will likely lead to a less than thorough analysis of public comments and decision-making process [in the EIS]." <sup>2</sup> Our concerns with the Settlement Agreement filed with the Babbitt court on October 6, 1997, are being borne out today and admitted by the Fund and who caused this NEPA process to commence. As of November 30, 1999, in an eleventh-hour decision, the NPS extended the DEIS comment period for the following reasons:

After the NPS re-evaluated the numerous requests they had received for an extension and decided that an extended review was appropriate in recognition of the complexity of the proposals, the degree of public interest in the draft plan, and the desire of the NPS for thoughtful public input based on a thorough review of the draft plan.

The winter use planning process is the result of a May 1997 lawsuit filed by several conservation and animal rights organizations and individuals. If the lawsuit had been fought unsuccessfully, all winter use of the parks could have been halted until an Environmental

<sup>2</sup> These pleadings were provided in our comments submitted to the Temporary Road Closure EA, are public record in the Babbitt proceeding over which the Court currently maintains jurisdiction, and are in the possession of legal counsel to the NPS and do not require resubmission with these comments but are incorporated by reference herein as if they were.

Impact Statement (EIS) was completed. The National Park Service opted instead to pursue a settlement agreement with the plaintiffs, which allowed activities to continue under the existing winter use plan while the EIS was prepared according to a prescribed schedule.

When the Draft Winter Use Plan and EIS was released in August, the NPS explained that requests for any additional extensions of the public comment period could not be granted because of a September 1, 2000 deadline for completion of the final plan contained in the settlement agreement. Plaintiffs in the lawsuit have agreed to extend the completion deadline to October 1, 2000 in order to accommodate further public comments.

The NPS still needs to extend the October 1, 2000 final EIS date in order to properly consider the thousands of comments received on the DEIS as required by NEPA and the CEQ regulations 40 CFR 1503.4. The Fund would be hard-pressed to object to such a request since they asked for, and received an extension of the public comment period even after over 11,000 comments on the DEIS had already been received prior to November 30, 1999.

The NPS press release also trivializes the Babbitt litigation which lead to this process. The press release leads the public to believe that had the NPS not settled the case with the Plaintiffs and paid them \$11,000 in Equal Access to Justice Act fees, the whole Park would have been "shut down." Nothing was further from the truth. The Fund would have been forced to prove irreparable harm from winter use. The underlying premise of the Fund's case was that bison should be trapped in the Park to starve to avoid a report of the 1996 extermination of bison leaving the Park to avoid the spread of brucellosis.

NEPA compliance is required by any contemplated "shut down." Even the Settlement Agreement acknowledges that fact, as did Plaintiffs' attorneys in open court. Further, our clients motion to intervene was originally denied only after the court granted us the opportunity to comment on the Settlement Agreement which was amended to require notice of any changes to intervenors. Over the temporary road closure EA was completed and no roads were closed as a result. The Fund

filed another suit which was dismissed and we were then granted full defendant-intervenor status in the present case.

The NPS press release is clearly self-serving and shows its bias toward the Fund and the Bluewater Network whose stated goal is to eliminate snowmobiling in national parks regardless of whether any actual impact or harm exists to bison, or the Parks other resources.

Since the Court retained jurisdiction over Babbitt, the NPS should seek leave of the court to amend the Settlement Agreement to extend the Final EIS completion date to address the time frame concerns raised by the Fund, GYA and NPS staff. To continue to rush the analysis of this project violates the mandate of NEPA to produce a well-reasoned analysis of the impacts posed by a winter use plan.

## **2. Release of the DEIS Over the Internet was Insufficient to Comply with NEPA and CEQ Public Comment Processes.**

Both NEPA and the CEQ regulations require meaningful public comment to major federal actions. The DEIS preferred alternative is a major federal action. It is required to use a format "which will encourage good analysis and clear presentation of the alternatives including the proposed action." 40 CFR 1502.10. The NPS made the DEIS available on the Internet around August 1, 1999. The hard copies of the DEIS were not received by persons so requesting copies until September 28, 1999. The DEIS exceeds 700 pages of text, maps, exhibits, letters, charts and other documents. Most personal computers do not have the capacity or sophistication to download such a large document. The Internet document did not provide uniform pagination sufficient for the public to easily work with the document even if they were able to download it. We believe, therefore, that the release of the DEIS on the Internet failed to meet the CEQ requirement of making the DEIS available for public comment.

## **3. The DEIS Fails to Comply With the Small Business Regulatory Enforcement Fairness Act ("SBREFA").**

The Small Business Regulatory Fairness Act ("SBREFA"), 5 U.S.C. sections 801 et seq., requires federal agencies to submit a report of proposed rules to each House of Congress and the Comptroller-General before it may become effective. A major rule may not become effective until 60 days after it is submitted to Congress or published in the Federal Register, whichever is later. This requirement is designed to keep Congress informed about rulemaking activities of federal agencies and to allow for congressional review of rules.

This is broader than rules subject to Administrative Procedure Act ("APA") rulemaking procedures. Agency actions required to be published by 5 U.S.C. section 552(a) but exempt from section 553 rulemaking procedures are required to be submitted under SBREFA. For each such decision, the agency must also submit the following: (1) a report containing a concise general statement relating to the rule and its proposed effective date; (2) a complete copy of any cost/benefit analysis; (3) information concerning the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act; and (4) any other relevant information or requirements under any other law or Executive Order.

As a federal agency within the Department of the Interior, the National Park Service is bound by SBREFA. The Winter Use Plan constitutes a rulemaking subject to SBREFA as such actions were described in an opinion issued by the Comptroller-General on July 3, 1997, opinion B-275178. If the Winter Use Plan is not properly submitted according to SBREFA all action taken by the NPS pursuant to it is invalid. This further necessitates amending the October 1, 2000 final EIS date.

## **4. The Cumulative Impacts for Plowing the Road from West Yellowstone, Montana to Old Faithful are Not Adequately Addressed in the DEIS.**

The NPS has a duty to provide sufficient actual data and analysis to support plowing the road from West Yellowstone to Old Faithful, eliminating the Grand Loop experience to oversnow use, establishing emission standards in excess of

state air quality and EPA guidelines and reducing noise decibels to arbitrary levels. The DEIS and Alternative B in particular violates the CEQ regulations in this regard. When applying NAPA, agencies must:

utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment....

The Wyoming, Montana and Munding Comments better analyze these impacts which must be addressed in the DEIS.

42 U.S.C. § 4332(A); 40 C.F.R. § 1502.6. NEPA does not envision undocumented narrative exposition, instead requiring:

Agencies shall insure the professional integrity, including the scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

40 C.F.R. § 1502.24. Specialized expertise often lies at the core of NEPA analysis, but the agency cannot cloak application of such expertise behind a veil of secrecy. Identification of experts, methods, research assumptions, reference sources, and other documentation must be identified to allow a reviewing court to apply even the deferential arbitrary and capricious standard of review to technical analysis. For instance, the "natural quiet" values proposed by the DEIS are not supported by data, methodology, sources or expert reports.

Hard data must be presented in the NEPA document itself, or at least must be specifically referenced in the NEPA document and presented in the administrative record. Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1213-1214 (9<sup>th</sup> Cir. 1998). The DEIS fails in this regard. The Montana, Wyoming ND Munding Comments point out the flawed and/or missing data which cannot be ignored by the NPS when evaluating Alternative B.

## **C. REVISED ALTERNATIVE E SHOULD BE ADOPTED IN THE FINAL EIS.**

### **1. Revised Alternative E.**

As proposed by Preferred Alternative B, plowing the road from West Yellowstone, Montana, to Old Faithful without allowing snowmobile travel over the route is environmentally unsound as it negatively affects bison and other wildlife, breaches existing concessionaire agreements for snowmobile tours, and eliminates a preferred mode of transportation for the public to enjoy the Yellowstone National Park, will likely fail to increase visitor numbers as estimated, and creates an economic windfall to the NPS at the expense of the gateway communities. See, Revised Alternative E, attached and incorporated by reference to these comments.

As better described in the Wyoming Comments beginning at page 20 of 49, "[r]evised Alternative E emphasizes the protection of wildlife and other natural resources while allowing park access to a *full* range of written recreation experiences."

### **a. Actions Common to Yellowstone, Grand Teton and the Parkway.**

1. Mitigates impacts pursuant to 36 CFR 2.18.
2. Encourages public/private partnership addressing visitor, natural resource management, emissions and sound concerns by establishing a FACA compliant advisory committee.
3. Requires the sale and use of bio-base fuels in the Parks beginning 2001-02 season. All commercial operators would be required to use the bio-based fuel.
4. Established a reasonable interim visitor carrying capacity based on use patterns related to a seven-year average. Adaptive planning would be used to address long-term carrying capacities for both visitors and wildlife.

5. Establish a nighttime closure to enter Yellowstone National Park, Grand Teton National Park and the Parkway to promote safety, improve trail maintenance and protect wildlife.
6. Implement aggressive safety and etiquette programs in conjunction with all user groups.
7. Strictly enforce the posted speed limit with a maximum speed of 45 mph.
8. Impose a 35 mph nighttime speed limit from sunrise to sunset during times the Parks are open to oversnow travel.
9. Better disbursement of winter uses throughout the Parks to eliminate concentrated users by utilizing existing visitor facilities for overnight lodging, food service, and warming huts. Additional warming huts are needed at areas that do not presently exist to enhance the visitor disbursement.
10. Develop and circulate an educational video for use in gateway communities and in the Park to inform snowmobile and other winter equipment renters of safety, laws, etiquette and park resource management concerns.

**b. Actions for Yellowstone National Park.**

1. Continue scientific studies and monitoring related to park resources and winter use utilizing objective third-party peer review. If such studies substantiate human use detrimentally effects park resources to such a degree as curtailment is necessary, conduct appropriate NEPA review with a minimum public comment period of 120 days and a one year notice of implementation before any closure takes place.
2. Prohibit plowing roads during the winter visitor season except for the Gardiner, Mammoth, Tower-Roosevelt and Cooke City areas.
3. Expand non-motorized opportunities/trails away from motorized routes to avoid user conflicts.
4. Restrict non-motorized uses to trails only to wildlife winter range areas.
5. Relocate snowmobile parking at Old Faithful away from the Visitor Center and Old Faithful Lodge to address congestion and visual

- concerns. Reserve parking in the immediate Visitors Center area for snowcoaches and ADA access for snowmobiles.
6. Require west entrances gate passes be pre-purchased at local outlets or at the public lands Information Center in West Yellowstone. Promote such pre-purchases at other entrances.

**c. Actions for Grand Teton National Park and the Parkway.**

1. Provide a route for the Continental Divide Snowmobile Trail on a year-round, off-road path from the east entrance of the Grand Teton National Park to Moran to Flagg Ranch while taking advantage of suitable resource conditions, to \_\_\_\_\_ and grade to accommodate both winter grooming and summer hiking/bicycle use. Commercial outfitting use of such a new trail would be allowed. The existing utility corridor could be utilized for this purpose.
2. Improve trail grooming along the Grass Lake Road in cooperation with the State of Wyoming and Fremont County, Idaho. Allow commercial outfitting use.
3. Continue motorized use by snowmobiles and snow planes on the frozen surface of Jackson Lake.
4. Provide expanded non-motorized opportunities away from motorized routes within the interior of the Grand Teton National Park along Teton Park Road and the Moose-Wilson Road. Enhance non-motorized opportunities in the Flagg Ranch area.
5. Continue destination and support facilities at Moose, Triangle-X, Colter Bay and Flagg Ranch. Add warming huts to expand visitor services and disperse visitor use.

**2. Adaptive Management and the Federal Advisory Committee Act.**

Revised Alternative E supports the adaptive management concepts raised in the DEIS. Such an adaptive management approach must continue scientific study and monitoring of all winter uses and their relative impacts on park resources utilizing mitigation efforts before closing roads or areas to winter use. The DEIS does not adequately describe how its adaptive management would be structured to

comply with the Federal Advisory Committee Act ("FACA"), 5 U.S.C. App. II section 1 *et seq.*

FACA provides for public notice of, public participation in, and public access to the documents of a committee formed to advise the federal government. There are three elements to FACA's definition of an advisory committee: (1) FACA applies only to a group containing at least one (1) person not employed by the government; (2) the group subject to FACA must be established either by statute, utilized by the President or an agency; and (3) the group must be established or utilized for the purpose of supplying advice or recommendations to the President or and agency.

Of concern is the remedy for violating FACA, injunctive relief in the form of prohibiting the use of the advisory committee report where the committee process did not comply with its requirements. Alabama-Tombigbee Rivers Coalition v. DOI, 26 F.3d 1103 (11<sup>th</sup> Cir. 1994). Such a result could severely impact the adaptive management portion of the DEIS and Revised Alternative E. It is in everyone's best interest that the adaptive management portion of the Winter Use Plan strictly comply with FACA so the committee work is not wasted and can be utilized.

### **3. Alternative B Cannot be Chosen for the Final EIS**

#### **a. Plowing the Road from West Yellowstone, Montana to Old Faithful is Not Supported by the DEIS**

As demonstrated by the Munding Comments, the DEIS fails to reconcile the DEIS for the Interagency Bison Management Plan ("Bison DEIS"). First, the DEIS and the Bison DEIS use different methodology for analyzing impacts to bison. Prior to 1967, the average number of bison removed from Yellowstone was greater even though the herd was smaller than in recent years, including 1996.

Alternative B completely omits analysis of the tunnel effect on ungulates that would be created by a tall berm. See Munding Comments. Further, Alternative B is completely devoid of analysis of plowing on bison migration. The Settlement Agreement provided that monitoring was to be done on bison.

The report from Robert Carroll and Daniel Bjornlie from September 30, 1998 indicates the following:

#### **PROGRESS: 9/30/1998**

Data were collected from November 1997 through May 1998 on the effects of road grooming on bison in the Madison-Firehole-Gibbon area of Yellowstone NP. Roads in the study area surveyed to determine diurnal and nocturnal road use by bison. No relationship was found between bison use of roads and snow depth. The number of bison groups observed traveling on roads increased in late December and then leveled off until late March when it increased sharply. This increase coincided with the end of road grooming and the beginning of road plowing for wheeled vehicles, as well as snow melt-off and vegetation greenup at lower elevations. Behavioral observations of traveling groups of bison reveal that interactions between bison and park visitors induced a negative reaction from bison in 21 of 28 interactions. Only 8 percent of bison travel took place on the groomed roads during the road grooming period. Most travel (62 percent) took place off of roads and established trail...appeared to use waterways as off-road travel corridors. Bison displayed behavior to minimize the energetic cost of traveling through snow. Bison groups were observed traveling single file in 91 of 125 instances.

This information was presented to NPS but not provided to the public as were other study results in the NPS news releases. The National Academy of Sciences determined that snowmobile trail grooming had no appreciable effect on the movement or health of bison in Yellowstone. Cheville, N.F., McCullough, D.R. & Paulson, L.R. 1997, Brucellosis in the greater Yellowstone Area, National Academy Press. Part II of that research specifically addresses the influences of grooming winter roads upon bison movement, and refutes the hypothesis that trail grooming has contributed to increases in bison population. Following an extensive review of the literature (including Meagher and Aune research) and independent research, the authors provide a substantial body of evidence refuting the premise for plowing the road. According to their findings, the authors

conclude that bison travel cross-country as often as they use groomed roads, that population growth has been constant before and after groomed roads were available and used by bison, and that mortality is controlled by factors other than grooming. In short, "[t]here seems to be little supporting evidence of an ultimate effect of road grooming on bison population dynamics." *Id.* At Part II, p. 24.

It is disturbing that the DEIS purposely omitted analysis of wildlife carrying capacities because "it is a complex effort outside the scope of this study and the decision to be made." DEIS Chapter 1. The Babbitt lawsuit by the Fund for Animals, which was the direct cause of this DEIS and its Settlement Agreement addressed, the need to monitor effects of winter use on wildlife populations. This certainly includes carrying capacity. *See also* Munding Comments, p. 2.

Alternatives B and E emphasize an adaptive management approach to park resource management. The DEIS fails to identify the nature of new and ongoing research, monitoring methods, standards to be used to determine disturbance to wildlife and contingency strategies. The Bison EIS contains some of this information but was not even acknowledged in the present DEIS. Also, no guidelines are established to determine when the Bison Plan and Winter Use Plan conflict with regard to bison management, which would take precedence. This is a cumulative effect that was not adequately addressed in the DEIS and is required under NEPA. *See also* Munding Comments, p. 4-9. The DEIS fails to analyze the tunnel effect on ungulates from the road plowing. Munding Comments, p. 7, No. 30.

#### **b. Natural Quiet Requirements are Unsubstantiated**

In addition to the lack of supporting data addressing the impacts to wildlife and bison, the DEIS's emphasis on "Natural Quiet" is unjustified. *See* Munding Comments, p. 7, No. 32. Snowmobiles and snowcoaches travel on long-established roads. The DEIS makes one believe you could travel by snowmobile anywhere in the Parks thus making the entrance area noisy. Nothing is further from the truth. It is seldom that anyone skis or snowshoes from an entrance to the Parks interior. Snowcoaches and snowmobiles provide access for these non-motorized activities. It is ridiculous to desire natural quiet next to an established road. The methodology of studying social recreational values is available but not

disclosed by the DEIS. In other words, the DEIS desires natural quiet but fails to justify its existence in areas of access to all visitors.

Revised Alternative E's desire for enhancing non-motorized travel corridors is a logical, reasonable way to address this concern. Closing what is a state highway to achieve natural quiet is unsubstantiated and too drastic.

#### **4. Strict Adherence to Applicable Water and Solid Waste Quality Standards**

Any pollution that harms the natural resources of the two parks is of concern to the Cooperating Counties. However, the magnitude of risk has to be put into perspective and treated proportionally as to the threat it poses.

The DEIS (and other Park documents) focuses on the unquantified effects posed by snowmachine emissions. It states, "Discussion of impacts of alternatives on snowmobile emissions exposure focuses on the likelihood that employees, visitors and snowmobile operators and riders will be exposed to air pollutant emissions that violate NAAQA and state air quality standards for Idaho, Montana, and Wyoming." (emphasis added) DEIS at 161.

There is no basis to establish that "likelihood." If it is real, then deference should be given to the appropriate state agencies to measure the air quality and to determine whether there has been any degradation. There is no indication that the states have failed their responsibilities and the jurisdiction for this relationship is reinforced in NPS Regulations that state:

Except as otherwise provided in this section, the laws of the State in which the exterior boundaries of a park area or a portion thereof is located shall govern equipment standards and the operation of snowmobiles. Non-conflicting state laws are adopted as a part of these regulations. 36 CFR Sec. 2.18 (b).

Sound scientific analysis is lacking throughout the DEIS. It repeatedly rests on assumptions as it attempts to establish a "likelihood" of air quality degradation, a key component of the document. For example, the DEIS states, "Generally, it is



assumed that when snowmachine use increases, the risk or potential for general water quality and aquatic resource impacts increases as well." *Id.* At 163 (emphasis added)

Another NPD document is even stronger in describing the profound lack of sound, scientific information on another interrelated issue. According to the *Environmental Assessment* (at 29), "Impacts to the aquatic resources (fish, amphibians, waterfowl, and vegetation) and the predators that use these resources (bears, wolves, eagles, otters, and mink) due to snowpack runoff containing potential snowmachine pollutants are *unknown*." (emphasis added)

These unknown amounts should be weighed against what is known and quantified -- the degree of water degradation that currently exists. The absolute standard for water quality is set out in YNP's own document: "[W]aters in Yellowstone National Park are designated Class I by the State of Wyoming; therefore, no wastewater discharges are allowed in these park waters." [cite]

But there have been sewage discharges in YNP. Its Superintendent, Mike Finley, wrote Wyoming's Department of Environmental Quality detailing a series of recent accidents. The December 3, 1998 letter from Supervisor Finley to Wyoming Department of Environmental Quality is attached and incorporated by reference in these comments. These actual spills pose a bigger, more concrete threat to both the aquatic and land resources of Yellowstone Park than those assumed by the NPS for snowmachine emissions.

Below is a summary of four of those sewage spills according to Mr. Finley:

- On June 2, 1998, "Approximately 67,000 gallons of partially treated sewage then discharged from the septic tank into the infiltration ditch. This infiltration ditch had a previously undetected breach in it some 225 feet from the septic tank and the partially treated sewage went out this breach, across approximately 50 feet of vegetation and into a backwater of Yellowstone Lake."

- On June 27, 1998, 70,000 gallons overflowed with much of it again escaping through a breach and being released "through the vegetation and into the backwater of Yellowstone Lake."
- On September 14, 1998, "The flow ran across the ground and discharged into Myriad Creek, a tributary to the Firehole River. Approximately 1,000 gallons overflowed the manhole and most of it reached the creek."
- Three weeks later on October 6-7 a spill downstream from the first resulted in another 45,000 gallons overflowing the system, "approximately 15,000 gallons of partially treated sewage was discharged from the septic tank."

YNP officials received a Notice of Violation (N.O.V), Docket Number 3013-98 from the Wyoming Department of Environmental Quality for these four sewage spills. Yet, in Mr. Finley's letter to Wyoming DEQ, there is no indication that NPS conducted any cleanup of either the land or water for these 114,000 gallons of sewage. As a result of this non-compliance, the Park faced sanctions, including fines.

The DEIS discusses the threat of degradation of streams as a result of snowmachine emissions. If this is truly a concern, then it is difficult to understand why Yellowstone officials have cut back on efforts to measure and evaluate the Park's streams. Its own Strategic Plan lays out the direction for this key issue, "Yellowstone no longer contributes funds to stream gauge monitoring programs due to funding shortages." The Plan further states that, "Ground water monitoring has been abandoned." We recommend an explanation that reconciles these actions since they seem to be at odds with the concerns referenced in the DEIS.

In addition, the DEIS' focus on *de minimis* water pollution levels, allegedly exacerbated by snowmachines, ignores the larger picture or the cause -- the antiquated systems that regularly dump large amounts of raw sewage into Yellowstone Lake and other pristine waters.

YNP Superintendent Mike Finley has detailed these in his letter to the Wyoming Department of Environmental Quality. In his December 3, 1998 letter Mr. Finley states that "[m]uch of the water and sewage collection and distribution

systems are leaking and the treatment facilities are in various states of deterioration ... One system has totally failed and resource damage is occurring in at least three others. The smaller septic tank systems are not being maintained properly and will eventually fail."

### 5. Snowmobile Emissions

Not only does the DEIS fail to adequately substantiate its strict emissions standards necessary by 2008-2009 in Alternative B, the NPS issued a press release grossly misstating air quality in Yellowstone in a blatant attempt to gain public support of oversnow use closures. In fact, the National Ambient Air Quality Standards were not exceeded at the West Yellowstone, Montana entrance to the Park as reported. The National Ambient Air Quality Standard for acceptable particulate matter is 65, not 60 as stated by the NPS. The particulate figures reported by the NPD were based on a four-hour exposure sample instead of the 24 hour standard. The NPS also mislead the public by grossly exaggerating the amount of poly-cyclic aromatic hydrocarbons ("PAHs") in pounds instead of micrograms. The actual amount PAHs emitted is approximately .000543 pounds. This is a huge error and clearly demonstrates the NPS apparent purposeful misrepresentation of the actual park air quality. Given the NPS gross misunderstanding of emission quantifications, it is arbitrary for the NPS not to follow the EPA guidelines on snowmobile emissions scheduled for release in just a few months. EPA standards should be adopted by the final EIS.

We have received information regarding emissions from Montana Department of Environmental Quality (DEQ). We also incorporate their comments to the DEIS by reference. It is our understanding that the Montana DEQ, in cooperation with NPS at Yellowstone, the Department of Energy, and many others have conducted or coordinated applied research activities related to snowmobiles and their impacts. These studies were to document problems and explore solutions to help land managers make informed decisions regarding snowmobile use on their lands. The work was undertaken with the expectation that it would be used in Yellowstone and other locations where snowmobiles are used.

Basing decisions for all the units of NPS on that small area by the West Entrance questionable. Montana DEQ states that there is a significant difference between ambient air standards and the NPS occupational exposure data collected in many NPS studies. The National Ambient Air Quality Standards (NAAQS) are set to protect the general population, and include a specific monitoring method and time period. Montana has adopted their own set of ambient air quality standards called the Montana Ambient Air Quality Standards (MAAQS). Apparently, two other states also have set standards other than the national standards. Occupational exposure data is not comparable to these standards unless the standard's data collection and analyses methods are used. See Montana DEQ Comments.

According to Montana DEQ, "personal exposure standards are designed to protect workers from exposure to pollutants over the course of a workday. There are three sets of current personal exposure standards, but only those of the Occupational Safety and Health Administration (OSHA) listed as personal exposure level (PEL) are enforceable. Other non-enforceable standards used for comparison in the references. These include the National Institute of Safety and Health (NIOSH), OSHA's research arm. NIOSH reports their standards as recommended exposure levels (REL). The American Conference of Governmental Industrial Hygienists (ACGIH) is another recognized organization that reports standards as threshold limit values (TLV). For comparison, the OSHA PEL is 50 PPM CO, NIOSH REL is 35 PPM, and the ACGIH TLV is 25 PPM." See Montana DEQ Comments.

"In considering emissions, the Montana DEQ felt the NPS report confused the limits imposed to protect employees in the workplace (50 PPM) with the ambient air quality standards. Ambient air quality standards specify a method to collect data and a limit. The NPS report incorrectly states that MAAQS have been exceeded by snowmobiles in Yellowstone. If MAAQS or NAAQS had been exceeded, it would have triggered a process to correct the situation. Information on this process should be in the NPS report, not just for Montana but the other NPS units of concern." See Montana DEQ Comments.

"Page 1, Paragraph 1, Sentence 4: Numbers of visitors and snowmobiles from West Yellowstone to Old Faithful is higher than the (61,568) number reflected in the Yellowstone...Winter Use Draft Environmental Impact Statement

(DEIS). Further, the way the sentence is constructed implies that all the people ride on snowmobiles, when in fact only 55,319 ride them (DEIS), and about 23-25 percent of the riders ride double or are towed. The sentence needs to be broken up to describe the total for the Park and West Entrance separately." See Montana DEQ Comments. See Montana DEQ Comments.

"Page 1, Paragraph 1, last sentence: The NPS report states that it is to provide information to enable the National Park Service to make an informed decision regarding use of snowmobiles in units of the NPS system. The sentence also should explain the differences between legal limits for "air quality" and "personal exposure levels." "All references to water quality should be placed separately since this paragraph focuses on air quality."

"[M]ost importantly, the DEIS fails to identify the largest variable in the air quality equation—climate at specific locations. Kado's 1999 draft final report illustrates that the West Entrance is the hot spot for Yellowstone's carbon monoxide and particulate matter sampling because of the high levels reported there compared to other sites. For another example, one street corner at a location near Yellowstone National Park has 250 times its annual average number of vehicles pass the intersection in the summer season without any deterioration in air quality. However, that same corner in the winter will have one-eighth (1/8) of its annual average annual vehicle count approach the National Ambient Air Quality Standards for carbon monoxide. The difference is the weather and dispersion of emissions." See Montana DEQ Comments.

"Page 1, second paragraph, last sentence: The sentence is not a complete comparison, and inaccurately paraphrases a conclusion in the White and Carroll report of 1998. ("Toxic hydrocarbon species are present in snowmobile exhaust in proportions similar to those observed from other sources such as passenger cars fueled with gasoline." Page 48, paragraph 2, Carroll et al. 1998." See Montana DEQ Comments.

"Page 1, last line "variability in these factors due primarily to..." We recommend you change the order from most impact to least. The primary differences (in descending order) are the test procedure used on the engines, second, the fuel, and third, the engine lubrication oil. However, the most

important factor relative to particulate matter is the lubrication oil (White and Carroll, 1998). An SAE paper presented in September 1998 and May 1999 detailing the ISO snowmobile procedure (used at SwRI) with a comparison to other engine test protocols (EPA, MMA, SAE J-1088)" is more accurate and should be reviewed in the DEIS." Over \$250,000 went into development of this procedure. "The real difference in emissions is how the engine is used in the field. The only procedure that is based on field data is the ISMA-approved ISO 5-mode steady-state procedure used by SwRI. This was developed by the same team that developed the EPA approved SAE J-1088 protocol for small engines in cooperation with the snowmobile industry and air quality control agencies, and in part, for use in the NPS-DOE-DEQ studies."

"Page 2, Table 1, Snowmobile emission factors: It is inappropriate to average all these emission factors due to the differences in test procedures and availability of products. For example, line item 8 lists SwRI 1998 Polaris emissions using aliphatic gasoline. This fuel is a specialty chemical in the United States costing about \$3.50 to \$4.00 per gallon (before taxes). The fuel type was added by SwRI in cooperation with some European countries. Aliphatic gasoline has no oxygenates, olefins, and virtually no sulfur or aromatics. Its purpose is to reduce carcinogenic exposures of operators (such as in the German forest products industry). The fuel is not suited to use in these two-stroke engines, and was found to increase ALL emissions but carcinogenic compounds. It would never be used in sleds in this country, and as a result of this testing, will not be used in Sweden or Germany either." See Montana DEQ Comments.

Page 2, Table 1, item 5: The table lists emission factors "Polaris 98 Rich" but does not explain this test's importance to managers. NPS should provide this explanation for their management. The "Rich" test shows that snowmobiles need to be properly set-up and jetted for the elevation and climate where they will be operated. The "Rich" test was conducted to simulate emissions and performance of a snowmobile that is jetted for a lower elevation, like Minnesota, but used in Yellowstone without re-jetting—a situation that does occur regularly in Yellowstone. The "Rich" test generated significantly higher HC, CO and PM emissions (20, 14, and 28 percent respectively) compared to the baseline emissions. Fuel consumption was increased by 13 percent, and power was

decreased by 14 percent. (page 12, paragraph 2, White and Carroll 1998)." See Montana DEQ Comments.

"Page 2, Paragraph 2, Sentence 2 "...by a factor of 2 lower...." The final report identifies CO was 40 percent lower. The temperature difference accounts for a major share of the difference. However, another factor in the lower CO number is that the SwRI emissions number is for the complete range of snowmobile use—five different driving styles and five different modes (incorporating variations in engine speed and torque). The emissions recorded by Bishop and Stedman were produced under a single operating style (touring, or moderate) mode, and engine speed and torque (10-15 mph). The similar HC concentrations indicate that these engines emit unburned fuel and lube oil at about the same proportion at any speed—a finding also confirmed in the laboratory tests." See Montana DEQ Comments.

"Page 3, first paragraph, last sentence: "...mean toluene concentration of...." This is a good finding. However, the report lacks an explanation of its significance for NPS managers. For example, the report can explain that the concentration of toluene in the exhaust vapor is similar to its concentration in gasoline (Morris, Bishop, Stedman 1999). Also, the concentration can be referenced to several occupational exposure standards. Page 3, second paragraph, first sentence, "Snowmobile emissions vary..." Please see comments for page 2, paragraph 2, sentence 2. Climate also changes snowmobile emissions." See Montana DEQ Comments

"Page 3, second paragraph, second sentence, "...snowmobile emissions increase with an increase in speed..." This statement is misleading because the highest production of emissions is at idle. White (1998) showed that the hotter the engine is, the lower the emissions—emissions are a factor of engine speed and torque, not snowmobile speed, as indicated in the NPS report." See Montana DEQ Comments

"Page 3, Paragraph 3: The entire analysis or the inventory of emissions is incomplete and inaccurate. It appears that NPS used the FTP certification data for automotive transportation, which is not comparable to the snowmobile data. NPS has left out other vehicles in the park. For example, where in this analyses are the

Bombardier snowcoaches with emissions that are similar to those of light trucks manufactured prior to 1970 (very high HC and 1,000 gm/mile CO)? Where are the emissions from diesel equipment such as tour busses, NPS maintenance equipment (trucks, plows, groomers) and the 19,100 gallons of gasoline NPS uses in the winter, non-recreational vehicles, and, since no distinction is made on boundaries, traffic and 18-wheelers operating on Highway 191? NPS uses over 63,000 gallons of diesel each year in the Park, (and concessions/contractors use even more) with at least 2 million gallons of gasoline consumed in the Park during the summer (through concessions) with only 225,000 gallons (the Park interior storage limit) in the winter. What emission factors are used for summer and winter vehicles? Does the analyses consider the increase in emissions based on the percentage of Toyota, GM, and Ford products in the inventory since these vehicles are known to emit more pollution products than EPA limits allowed for the (1992-1998) time period stated? Also, snowmobile power at the Yellowstone elevation should be de-rated from the 20.1 bshp average running in the park (White, Carroll, 1998, Appendix B). Please re-check your winter emission calculations for a peak day because they appear to be incorrect. It may help the public to understand your calculations and assumptions by adding the sample calculation to the appendix." See Montana DEQ Comments.

The report is on "air quality impacts of snowmobiles. How does a comparison of snowmobile emissions to an incomplete emissions inventory benefit the understanding of these emissions' impacts and management of these impacts? What is needed is some monitoring method to enable an individual NPS unit to define any snowmobile impacts. The University of Denver is developing one such tool, but this is not indicated in this report. Another tool NPS managers could request from OSHA would be pollutant monitors for areas where staff must work. Such monitoring would help determine public health and occupational exposure concerns would occur wherever there is snowmobile congestion. Such studies might show the need for expensive air quality monitoring of a specific to a location, but it would not mean the entire park unit has an air quality problem." See Montana DEQ Comments.

"Page 3, Paragraph 4, Sentence 5, "Southwest Research Institute also conducted tests on four organics...." This should read "conducted hydrocarbon speciation tests." This statement as written suggests that the writers did not read

the entire report or missed the importance of the color figures and appendix C. SwRI conducted hydrocarbon speciation of C1-C13 and C13-C23 following an FTP protocol also listed in the report. The first series covers 189 compounds and the last series covered thousands of compounds. Only four were graphed for a quick comparison. This paragraph also appears to confuse air toxics with polycyclic aromatic hydrocarbons." See Montana DEQ Comments.

"Page 4, top partial paragraph "...1 pound of PAHs per 4-hour visit..." Several reports by the Montana Bureau of Business and Economic Research and others have documented that the average snowmobiler to YNP rides 91 miles and operates the engine for 4-hours throughout the complete day. It appears from the Yellowstone gate numbers that most visitors are there for longer than a 4-hour visit. This statement should replace the word "visit" with "per 4-hours of engine operation." Also, managers and the public may not be as alarmed if the equation and assumptions are printed in an appendix to the DEIS." See Montana DEQ Comments.

"Page 4, first full paragraph, Potential effects on air quality: This paragraph should be titled "potential effects on public health and the environment." The paragraph confuses air quality (ozone) with occupational and personal exposure levels of CO. It would be best split into two or more paragraphs. Sentence eight that begins "Carbon monoxide can affect humans..." should be removed to start a new paragraph below this one with a description of occupational exposure levels and health impacts. It might be of importance to compare some of Kado's (1999) work to benzene (PEL = 1PPM, REL = 0.1 PPM and TLV=0.5 PPM) and toluene (PEL = 200 PPM with a 300 PPM ceiling limit, REL = 100 PPM and TLV=50 PPM) standards. The paragraph on personal exposure should also include the last three sentences in this paragraph." See Montana DEQ Comments.

"Page 4, first paragraph, last sentence, "...vicinity of snowmobile exhaust, such as..." A more appropriate reference should be areas of traffic congestion and poor emission dispersion. This would include toll booths, but also a parking lots and specific winter attractions." See Montana DEQ Comments.

"Page 5, sentences 3 and 4, "...unknown the extent to which either of these...are used in NPS units..." The report should list the NPS units that allow

snowmobiles, and the state in which these are located. For example, Minnesota, Iowa, and several other states require the use of ethanol blend year-round. The report would be of better use to decision makers if these items were specified, or if NPS units were given guidance on who to contact to determine if oxygenates are required in an area. See Montana DEQ Comments.

"Page 6, Clean Air Act Designations: NPS should list (in a table or appendix) the NPS units that include Class I airsheds and use snowmobiles. As written, the paragraph implies that all 48 Class I NPS units are in danger of air quality problems from snowmobiles, and this is not the case." See Montana DEQ Comments.

"Page 8, first paragraph, "...correlation between emissions and snowmobiles...Air Resource Specialists 1996)..." This statement is incorrect. The report referenced is a draft report that did not incorporate comments (from Montana Department of Environmental Quality) stating that 85 percent of the data are not valid because of leaks and other equipment problems. A better reference would be Kado et al. 1999 that did correlate particulate matter with the number of snowmobiles on an hourly basis." See Montana DEQ Comments.

"Page 8, last paragraph, "...4-hour exposure..." The paragraph uses the exposure samples in an incorrect manner. It is inappropriate to compare a 4-hour exposure with an 8-hour standard. To properly compare the sample with the standard, the assumption must be made that this was the exposure for the entire shift, and divide the sample amount by the total hours of the shift. Comparisons in the revised draft final from Kado et al. should be used. The samples were taken during the times of highest exposure. They show a need for a follow-up study, and a possible need to move employees between jobs and exposure levels during a shift. They do not show that a standard has been exceeded or approached, which is what these statements imply." See Montana DEQ Comments.

"Page 9, second paragraph, last sentence "...as a result of snowmobile use..." Even though this is a quote from a draft report, it is not accurate. A preliminary air quality model of the area shows that the snowcoaches also contribute significantly to CO and HC because they have no emission controls." See Montana DEQ Comments.

"Page 9, paragraph 3, first sentence "dangerously high." What standard is NPS using to determine that these levels are "dangerously high?" Please remove the word dangerously or cite the corresponding standard used. We agree that employees and visitor exposure needs to be minimized, however, more study is needed before these levels can be categorized as dangerous. Further, the paragraph implies that removal of high levels of snowmobile emissions would resolve all the problems, which is false. The problem really is a high amount of pollution trapped in an area with poor dispersion characteristics. This usually occurs with automobiles and trucks in congested areas. NPS can reduce congestion in certain areas to reduce exposure, and or relocate congestion of winter traffic to areas with better air flow and emission dispersion characteristics." See Montana DEQ Comments.

"Page 9, paragraph 5, Two-stroke vs Four-stroke, first sentence, "...lower amounts of CO...." This statement is incorrect for cold climates. Bishop measured CO of a 4-stroke snowmobile and found that the CO emissions were over twice that of the 2-stroke snowmobiles, although smoke and HC were significantly lower. There is not much difference in CO emissions when the climate is cold because most engines burn rich (with more fuel) under those conditions. Please remove CO from the first and second sentences. White et al. indicated some reduction of CO from direct injection, 2-stroke engines, but not 70 percent." See Montana DEQ Comments.

Our quoting of the Montana DEQ Comments and Mr. Howard Haines is important because of the blatant inaccuracies in the DEIS. The NPS cannot rely on the flawed conclusions in the DEIS about snowmobile emissions. Real, not exaggerated health risks should be analyzed and addressed. To do anything less would violate NEPA, APA, Clean Air Act and the Clean Water Act.

#### **6. Socio-Economic Effects of Alternative B and All Other Alternatives.**

Yellowstone, Montana earns its living directly or indirectly because of the long-standing partnership that exists with Yellowstone National Park.

It is important to remember that the town site of West Yellowstone was carved out of the National Forest by an act of Congress nearly one hundred years ago expressly for the purpose of providing essential services to Yellowstone Park's visitors. From then until now, this community has existed to that end. Businesses and lives have been built upon good faith in a continuing partnership effort with Yellowstone National Park. As the number of visitors has grown from year to year, so has West Yellowstone grown to accommodate them. As the number of park service employees has increased, the town has expanded to provide basic health, police, and fire protection. West Yellowstone has grown to meet its obligation to educate NPS employees' children as well as its own. As part of the partnership, the town even disposes of the Park's garbage. The relationship is intimate and completely interdependent. They have historically been partners, but the events of the last few years thereafter that what has been accomplished in this century of working in tandem may soon be forever lost.

The Preferred Alternative B in the DEIS proposes to plow the road between West Yellowstone and Old Faithful in winter. This will effectively destroy the snowmobile dependent winter economy of West Yellowstone. This community has come to depend upon winter business to fund approximately one half of the necessary year-round infrastructure and basic service needs. To compound the problem, many summer businesses are now tied to winter enterprises. If this alternative is implemented, summer reliant motels, restaurants, and retail shops will collapse as surely as winter ones will since mortgages and cash flow issues have come to rely upon four seasons of commerce instead of just one. To remove this critical economic linchpin will render the town non-viable. The question will be not if the community will perish, but how long it will take.

Within the DEIS, great care is taken to prove on paper that access by wheeled vehicles will actually INCREASE the number of visitors to the Park in winter. What the document fails to examine is whether or not people will actually visit Yellowstone in winter if snowmobiling the lower loop is no longer available to them. Unlike some who seem to have been persuaded that the 'field of dreams' approach will work, the town does not believe for one moment that "If you plow it, they will come." Our clients deal daily with visitors to this region. Based upon years of experience and hundreds of conversations with potential visitors, the proprietors and concessionaires in West Yellowstone predict that very few people

will make the trip to Yellowstone if they are unable to enjoy the unique snowmobile experience. This is confirmed by the fact that while snowcoaches have always been available as an alternative means of winter transportation, they have never gained popularity with the majority of winter visitors. It follows, then, that people are extremely unlikely to travel across the country in winter to ride in buses or vans. See Comments of Bill Howell, Clyde Seely and Vicki Eggers, incorporated by reference in these comments.

The DEIS estimates that plowing the road from West Yellowstone to Old Faithful will result in a \$12.4 million decrease in visitor spending and the loss of 301 jobs in the Greater Yellowstone Area (GYA). [Vol. 1, page 198] The surrounding states estimate that this loss will actually be over \$100 million in visitor spending and more than 1,000 jobs in the GYA. [Vol. 2, Appendix]

Alternative B proposes to provide shuttle bus service between West Yellowstone and Old Faithful at a "cost of \$10 to \$20" per person to "provide affordable access to the Park's interior." [Vol. 1, page 199] This will require a taxpayer subsidy of \$25 to \$40 per person since it costs an average of \$38 per person plus a \$10 person park entrance fee to enter the Park on a bus during the summer season.

One of the Park's stated reasons for plowing the road from West Yellowstone to Old Faithful is to "provide affordable access for minority and low-income people" since this segment of the population would now typically have to pay \$85 to \$100 a day to rent a snowcoach or snowmobile to visit Old Faithful. Yet, in the DEIS, the NPS admits the current income distribution of summer and winter visitors to Yellowstone is quite similar, even though the summer visitors do not have to pay the "high" costs of snowmobile or snowcoach rental. "The 1999 Winter Visitor Survey in the GYA found that 11.9% of winter visitors reported having a 1998 total household income below \$15,000. These results are comparable to results found in a 1998 summer visitor survey in YNP where 11.1% of respondents reported a household income below \$15,000. The 1999 winter visitor survey reported that 99.0% of all winter recreation visitors in the GYA are white, which compares to summer visitors where 98% are white." [Vol. 1, page 91] It costs all visitors a significant amount of money just to get to the Yellowstone area, regardless of whether they are low, middle or high income, and

the cost of a snowmobile, snowcoach, or even a bus rental for that matter, is irrelevant as to whether or not they can afford to visit Yellowstone. [Vol. 1, page 199]

Visitor access from the west entrance would be primarily by mass transit with very limited opportunity for private vehicle access (by reservation only). 10 to 20 trailer spaces would be available at Old Faithful for snowmobile trailer parking, with up to 40 spaces being available for passenger vehicles. All other access would be via 20-30 buses and a fleet of 45 15-passenger vans departing at 45 minute intervals. Under this scenario, NPS proposes to increase average daily visitation to Old Faithful by almost 130%. [Vol. 1, page 218] This is peculiar since "overcrowding" and the overtaking of services at Old Faithful has been an issue persistently touted by the NPS. [Winter Visitor Use Management: A Multi-Agency Assessment, Greater Yellowstone Coordinating Committee - March 1999, page 14] See also Comments of Bill Howell.

The NPS Directors Order #17, dated September 28, 1999 National Park Service Tourism Policy 6 purpose "is to promote and support sustainable, responsible, informed, and managed visitor use through cooperation and coordination with the tourism industry." § 1. "It is to each Park's advantage to find common ground with tourism interests." Id. § 3.2. "Conversely, the [National Park Service] must seek to understand the goals, capabilities, and limitations of the tourism industry, and recognize that tourism businesses have financial obligations to meet and investments to protect." Plowing the road will result in great harm to West Yellowstone. There will be little incentive for visitors to stay in West Yellowstone if snowmobiling is discontinued. The busses proposed by Alternative B may result in greater revenue to the Park but will result in devastating its long-time partner, West Yellowstone. NPS policy disallows this and should be followed. The plain language of Directors Order #17 requires the NPS to take action. See Idaho Watersheds Project v. Hahn 187 E. 3d 1035, 1037 (9th cir. 1999). That action is to find a way to provide tourism opportunities with the best interests of the gateway communities in mind.

The DEIS has failed to adequately examine the socio-economic impacts of the alternatives upon gateway communities, regions, and states and has failed to

implement the socio-economic information the cooperating agencies supplied to the NPS for the DEIS.

#### **7. Sound Concerns**

Sound levels for snowmobiles would be required to be at or below 70 decibels as measured on the A-weighted scale at 50 feet at full throttle (as compared to present sound law of 78 decibels or below). [Vol. 1, pages 28 and 214] This reduction of 8 decibels would mean snowmobiles would be required to be nearly one-half as loud as they are now (-10 decibels is one-half as loud). By comparison, the sound level for a diesel truck (bus) is 80 decibels at 40 mph at 50' is 60 to 70 decibels (a little Honda is closer to the 60 decibels while a pickup truck is 70 or even 75 decibels). [Vol. 1, page 128] The sound law based on full throttle for a snowmobile is not an equal comparison to other vehicles at 40 mph. First, a snowmobile is operated in the Parks at a maximum speed of 45 mph. Certainly not at full throttle. Second, the sound level for the other vehicles would be much higher if they were also operated at "full throttle" for the comparative sound measurement. Snowmobiles and other vehicles should have equal standards.

#### **D. CONCLUSION**


Our clients oppose the preferred Alternative B that would plow the road from West Yellowstone to Old Faithful. The DEIS has not accurately or sufficiently considered the impact of this alternative on surrounding communities, visitor expectation and experience, wildlife, and the resource.

National Parks are established for the use and enjoyment of people. While the Park's resources must be protected for the future, today's special winter visitor experience must also be protected. Touring Yellowstone by snowmobile combines the grandeur of the Park's unique features with the freedom to experience it directly. The DEIS must protect this experience.

Thank you for considering our comments. Please put my name on your mailing list so I can be kept informed on this issue.

Sincerely,

MOORE SMITH BUXTON & TURCKE,  
CHARTERED

  
Susan E. Buxton

cc: Clients

Enclosure

SEB/bai



**MOORE SMITH BUXTON AND TURCKE**

Page 2. Re: Revised Alternative E. It appears too much emphasis is placed on support or justification for a course of action or decision. Under the CEQ regulations, the requirement of an EIS is to provide a range of reasonable alternatives that clearly define the issues, and to fully evaluate and disclose the possible effects of those alternatives. The DEIS meets this requirement. Revised Alternative E comes from cooperating agencies and the Blue Ribbon Coalition in a variety of forms. The essentials of Revised Alternative E (all versions considered) are not significantly different from alternative E as presented in the DEIS, especially considering the programmatic nature of the proposed action. See the matrix comparison of Revised Alternative E versus the features analyzed in the range of alternatives. All alternatives in the DEIS, including B, meet the purpose and need for action to a greater or lesser degree. In our estimation, it is unrealistic to expect all alternatives in an EIS to meet all desired conditions expressed in the purpose and need for action equally well. Such a set of alternatives would likely have no significant differences among them and fail to meet the CEQ requirement for evaluating a range of options.

Pages 3-4. Re: Particulate matter study. Criticism stemming from the release of the ARD report and its content is beyond the scope of this EIS analysis and requires no response. The report's contents, in respect to the alleged faulty information, was not a part of the Draft EIS. The fact that there may be disagreement with how the document was publicized and distributed does not affect the air resources analysis in the EIS. The release of the document, done independently from the EIS process, was hardly a media blitz. Certainly, the ensuing media coverage, in which the cooperating agencies played a large role, was not encouraged by NPS. The commenter should be aware that the mathematical errors and related comparisons have been corrected in the report, which has been re-released and is available for use in support of the FEIS.

Page 4. Re: Support of alternative E and not B. In general, the tenor of these expressions of support and opposition relate to the decision that the commenter would like to see NPS make, or not make. The general response to such comments is that the commenter's opinions will be considered in making the final decision, but that there is nothing in those opinions that substantively would alter the range of alternative features to be evaluated in the Final EIS. For example, if the features that are not supported were to be deleted from the range of alternatives then the analysis would be left only with features that the commenter likes or agrees with. If only the actions that are liked by the commenter remain, then there is effectively only one alternative. From the NEPA standpoint, the analysis cannot be channeled in this fashion. Therefore, expressions of support or objection will not be responded to, in general, by changes in alternative features – they will be responded to when the decision criteria are developed, and accordingly, when the rationale for the decision is presented in the Record of Decision. People who commented in this fashion are asked to consider that there is a very clear separation between alternatives legitimately considered in an analysis and the expression of a preferred alternative or the decision to be made.

Page 4-7. Re: B.1. Fund for Animals V. Babbitt. How the settlement timeframes were set is not material to the EIS process itself, which must be conducted in accordance with NEPA and the CEQ regulations. Certainly the time frames represent a challenge to all involved in the process. Arguments about extensions do not relate substantively to the adequacy of the EIS or the alternatives in a way that NPS can respond to. NPS will respond to comments on both when presented as such.

Page 7. Re: B.2. Release of the DEIS over the internet. NPS put the DEIS on the internet to meet the requirement of the settlement agreement that the draft be released in August 1999. The plaintiffs in the suit did not object to that method of complying with the settlement agreement. Once the hard copies of the DEIS were available, NPS allowed a 60 day comment period to comply with CEQ requirement for requesting public comment (§1503.1(a)(4)).

Page 8. Re: B3. Small Business Regulatory Enforcement Act. NPS disagrees that it must submit the Winter Use Plan and EIS to Congressional review under the terms of the SBREFA. If a rule change is required as a result of the final decision, NPS will comply with all applicable requirements.

**MOORE SMITH BUXTON AND TURCKE**

Pages 8-9. Re: B.4. Cumulative impact for planning the road from West Yellowstone to Old Faithful. NPS evaluated the impacts of alternative B and other alternatives that incorporate the features mentioned in this comment. A systematic, interdisciplinary process was used in accordance with CEQ regulations. NEPA does not absolutely require the use of actual data. It requires sufficient information in the context of the scope of analysis, which in this case is programmatic and not site-specific. The EIS analysis is aimed at developing a programmatic plan (§1508.18(b)(2) and (3)) for winter use. If the concern relates to site-specific gaps in information, it should also be noted that there is no requirement to develop exhaustive site-specific information (“hard data”) to support a programmatic planning document. An EIS is not, per se, a scientific analysis. It is intended to disclose environmental effects over a range of alternatives, in which the analyses must demonstrate scientific integrity by disclosing methods and making explicit references to sources used (40 CFR 1502.24). The DEIS does this. CEQ regulations also allow for incomplete or unavailable information, by describing procedures that are to be following in these instances (§1502.22). For any identified gaps in the DEIS, NPS will follow the requisite procedures.

The CEQ regulations define special expertise as “statutory responsibility, agency mission, or related program experience” §1508.26. NPS has fully documented its procedures in this regard. Methods of analysis, including assumptions and expertise (in the form of current literature) are revealed for all impact topics at the beginning of DEIS Chapter IV. The EIS preparers and consultants used are listed in Appendix B of the DEIS for all interested parties to see.

Page 10. Re: C.1. Revised Alternative E. Please see response to comment, “Page 2.”

Page 10. Re: C.1.a. Actions common to Yellowstone, Grand Teton and the Parkway. Please see responses to Letter 1, Wyoming comments on Revised Alternative E. Most suggested features are evaluated in the DEIS alternative E or in another alternative, so these choices remain for the decision maker. NPS is encouraged by support from the cooperating agencies on establishing a recreation carrying capacity. In practice, setting a carrying capacity is a highly complex and potentially divisive exercise. NPS managers decided there was not sufficient time available in the settlement time frame to devote to this type of analysis. However, in response to EPA and a variety of cooperating agency comments, NPS will analyze the use of interim use limitations to mitigate effects in several alternatives. The seven year average will be used in one or more instances.

Page 12. Re: C.2. Adaptive management and the Federal Advisory Committee Act. Adaptive management will be better described in the FEIS. Adaptive management is a strategy to move from the existing condition to the desired condition in two alternatives. The strategy represents a very deliberate way of proceeding, erring on the conservative side to maintain existing motorized use at the risk of possible short-term impacts on resources or other visitors. Processes associated with adaptive management will be provided in the FEIS: definitions, administrative actions, study methods, management actions, and NEPA requirements. Although FACA is not necessarily a concern should adaptive management be implemented, any decision that requires ongoing advice from a group of non-agency persons must comply with FACA. This does not necessarily mean that the NPS will charter a formal advisory committee under FACA, as certain exceptions to such formal action are available.

Page 13. Re: Bison Management DEIS/Plan and the Winter Use DEIS; two different methodologies used. Work accomplished by biologists on defining the wildlife affected environment and the effects of winter use on it are cognizant of the carrying capacity issue. Such determinations include many factors other than those associated with winter use. For this reason, NPS holds to its determination that setting carrying capacities is beyond the scope of this effort. The winter use FEIS will be made as consistent as possible with the Bison Management FEIS/Plan. It should be understood that the Bison Management EIS/Plan is not yet published, and no decision has yet been made for bison management. The final EIS for winter use will be made as consistent as possible with the final EIS for bison management in terms of analysis. Certainly the decisions will need to be consistent.

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Page 13. Re: C.3.a. Tunnel effect on ungulates and plowing on bison. Refer to responses to Letter 35, John Munding. In all alternatives, including B, the effects of plowed roads on ungulates are disclosed. For alternative B, this may be found on DEIS pages 208-209. Although it does not explicitly mention bison, it states that plowed roads may provide “wildlife” with an energy efficient mechanism for movement. The FEIS will be revised to include the effects of plowed roads on bison migration. Although the DEIS does not use the term “tunnel effect” it does discuss the negative impact associated with snow berms along the plowed road corridor, and suggests mitigation (p. 209). NPS and the commenter disagree on whether or not a tunnel effect would result from plowing. In many other areas within the three park units, and in the 3 state area, roads are plowed and no tunnel effect exists. As for the Settlement Agreement, bison monitoring is ongoing and current information pertaining to that effort will be included in the FEIS.

Pages 14-15. Re: C.3.b. Groomed winter roads and bison movement. The bison analysis will be reviewed and updated as necessary. In an effort to better understand the relationship of bison movements and the use of the winter groomed road system, managers have instituted studies that address this issue. While groomed roads may have contributed to the redistribution of bison within park boundaries (Meagher 1997), it appears that bison tend to use waterways and off-road trails for much of their travel on the west side of the park (Bjornlie and Garrett 1998). Their movement toward park boundaries may occur on such routes. Monitoring of bison movements in the Hayden Valley and Mammoth to Gibbon Falls sections of the park has found that less than 12% of bison movements occurred on the groomed road surface (Kurz et al. 1998, 1999). However, groomed roads may have allowed larger numbers of bison to exist in the park than in the absence of groomed roads, by allowing access to otherwise unavailable foraging areas. In addition, westward redistribution early in the winter may predispose some bison to exit the park (Meagher 1997). Therefore closing of groomed roads could have the effect of reducing population size and shifting distribution back to patterns observed before grooming, thereby possibly reducing the magnitude of bison movements outside park boundaries. Conversely, bison are highly social and appear to retain and pass along knowledge through generations (Meagher 1985), so it is possible that closing groomed roads may not impact bison movements and distribution. Research is currently being conducted to better understand the relationship between road grooming and bison movement and distribution patterns.

Page 15. Re: C.3.a. Analysis of wildlife carrying capacities. Work accomplished by biologists on defining the wildlife affected environment and the effects of winter use on it are cognizant of the carrying capacity issue. Such determinations include many factors other than those associated with winter use. For this reason, NPS holds to its determination that setting carrying capacities is beyond the scope of this effort. The winter use FEIS will be made as consistent as possible with the Bison Management FEIS/Plan. It should be understood that the Bison Management EIS/Plan is not yet published, and no decision has yet been made for bison management. Relative to adaptive management, see response to comment, “Page 12. Re: C.2.”

Page 15. Re: C.4. Natural quiet requirements. Natural quiet (natural soundscape) is a value that attracts many people to national parks. Commenter is referred to page 126 in the DEIS, and to Appendix C which elucidates on NPS policies relating to this. The sound analysis will be updated for the FEIS to provide more quantitative analysis relative to the concerns expressed.

Pages 16-18. Re: C.4. Water and solid waste quality standards. Please see response to comment, “Pages 8-9.” EPA notes that the DEIS includes extensive analysis of the effects from current winter use that demonstrates significant environmental and human health impacts, and that it includes among the most thorough and substantial science base they’ve seen to support a NEPA document. Regarding air quality and related impacts on water and aquatic resources, the FEIS will incorporate additional data and recent studies in these areas. The comments on sewage spills in Yellowstone are not pertinent to the issue at hand – impacts from winter use. Such events may be more appropriate to a discussion of cumulative impacts. The eventual decision from the winter use EIS will provide direction on monitoring needs pursuant to winter recreation use. Such a decision represents a commitment to funding focused monitoring efforts.

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Pages 19-27. Re: C.5. Snowmobile emissions. The ARD report is not pertinent to this discussion. The material cited and discussed by the commenter is not in the DEIS, nor was it part of the DEIS process. Comments were not solicited on the ARD report, but on the DEIS. In the DEIS, the purpose and need for action (Chapter I) indicates there is a gap between existing conditions and desired conditions for air quality and other resources in the parks. Alternative B and other alternatives prescribe actions, or standards for actions, intended to close that gap. The baseline for comparison is the existing condition, as reflected in alternative A. An improvement in air quality would be expected from implementing alternative B, as disclosed in the DEIS. NPS has an affirmative responsibility to protect park values and Class I air quality, and it has the authority to do so. The DEIS states that at any time, if EPA adopts stricter standards applicable to park resources, they will be adopted.

Page 20. Re: C.5. Montana DEQ. The air resources impact analysis will be updated in the FEIS, partly in response to comments from Montana DEQ.

Page 28. Re: C.6. Winter economy of West Yellowstone. The economic impacts of all alternatives are evaluated and disclosed in the DEIS. NPS acknowledges that any decision resulting from this EIS is likely to cause economic change in all local communities. However, a legal decision will not be made or justified until after the final EIS is published, and all alternatives must be considered in the decision process.

Page 28. Re: C.5. Use levels if snowmobiling in lower loop unavailable. The possible impacts of the alternatives on recreation and visitors to the parks are disclosed in the document. The results of the winter use surveys conducted in the parks, which are reported in the DEIS, address this question. With reference to alternative B and plowing the road from West Yellowstone to Old Faithful, there is a clear disagreement on whether or not people will continue to come. Certainly some current users will not; there could be many others who presently decline to snowmobile but would be happy to see Old Faithful in the winter.

Page 29. Re: C.6. Decrease in visitor spending and loss of jobs. The economic analysis will be updated for the FEIS. The states' analyses produce different results. Both analyses will be disclosed, as is appropriate under CEQ regulations.

Page 29. Re: C.6. One stated purpose of plowing the road (DEIS, page 28) is to "improve affordable access" – not, as the commenter states, to "provide affordable access for minority and low-income people". A thorough reading of the EIS would reveal that a required impact topic in an EIS is to evaluate the effects of a proposed action on socially or economically disadvantaged populations (DEIS, page 80). These populations are characterized on page 90 in the DEIS, and the effects on those populations are disclosed in the socioeconomic section for each alternative (DEIS, pp 176, 199, 224, 245, 260, 274, 288). The stated impacts on socially or economically disadvantaged populations are not used as "justification" for plowing in alternative B.

Page 30. Re: Alternative B road plowing, alleged increased use, and overcrowding at Old Faithful: NPS will review the discussion and clarify it as necessary (Ref. DEIS page 218. WVUM page 14).

Page 30. Re: C.6 Plowing the road harmful. The inference is that since people choose to come to parks to snowmobile, they would not choose to experience the Park in any other fashion. The commenter seems to further infer that because the economies have thrived on this demand, then freedom and economic well being in the gateway communities should have priority over any adverse impacts that this use may cause. However, the NPS mandate, as stated in the purpose and need section, places personal enjoyment and freedom of access in a subordinate role to protection of park values so they are unimpaired for future generations. NPS acknowledges that management changes could impact local businesses, particularly those catering to the snowmobile visitor immediately outside the park. NPS is also aware that other opportunities for winter visitors exist. In short, the EIS effort to evaluate various alternatives for winter use will result in a decision fully compliant with the stated policy of sustainable, responsible, informed and managed visitor use.

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Page 30. Re: C.6. Failed to adequately examine the socioeconomic impacts. Economic effects of all alternatives are fully disclosed. We fail to understand what the commenter means by the Park Service's "failure to implement the socio-economic information provide by the cooperating agencies." NPS has not disregarded the cooperating agencies' information. According to the CEQ regulations, §1503.3(b), commenting agencies that criticize an analysis methodology should describe an alternative methodology and why it prefers it. The commenter does not specifically indicate what is incorrect about the agency methods used. If there is a significant difference of opinion regarding economics, as there may be in this case, then the remedy provided in CEQ regulations (§1502.9(a)) is to report both opinions in order to meet the disclosure requirement. This approach was taken in the DEIS by reporting the results of NPS studies and the reports from each cooperating agency. Page 83 of the DEIS makes reference to the use of source information provided by the cooperators, all of which is presented in DEIS Appendix A. The characterization of the socioeconomic environment specifically cites information from the cooperators or their consultants, such as Dr. Taylor. On pages 298 through 315, the DEIS discloses the impacts of each alternative on adjacent lands in the cooperating agencies' own terms.

Page 31. Re: 7. Sound Concerns. The analysis of sound will be updated and clarified in the FEIS.